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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 UNITED STATES OF AMERICA,

No. CR 06-702 CW

9 Plaintiff,

ORDER DENYING

10 v.

MOTION FOR

SENTENCE REDUCTION

(DOCKET NO. 57)

11 DEREK LORENZO WALKER,

12 Defendant.
13 _____/

14 Defendant Derek Lorenzo Walker, appearing pro se, moves for a
15 reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) and
16 U.S.S.G. § 1B1.10 based on the Sentencing Commission's Amendment
17 750 which retroactively lowers the base offense levels applicable
18 to cocaine base offenses. Having considered the entire record in
19 this case, the Court DENIES Defendant's motion.

20 BACKGROUND

21 On March 26, 2007, Defendant plead guilty, in a plea
22 agreement pursuant to Federal Rule of Civil Procedure 11(c)(1)(C),
23 to one count of conspiracy to distribute cocaine base in violation
24 of 21 U.S.C. §§ 846, 841(b)(1)(B)(iii). Plea Agreement (Docket
25 No. 20.) ¶ 1. The parties agreed that Defendant's offense level
26 was 34, pursuant to the Career Offender Guideline, U.S.S.G.
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1 § 4B1.1(b)(B), and that Defendant might be eligible for a three-
2 level reduction for acceptance of responsibility pursuant to
3 U.S.S.G. § 3E1.1. Id. ¶ 7. The Sentencing Table provides for a
4 Guideline range of 188-235 months imprisonment at an offense level
5 of 31 and a Criminal History Category of VI. The parties further
6 agreed that a reasonable and appropriate disposition was a
7 sentence of eighty-four months imprisonment. Id. On June 13,
8 2007, the Court held a sentencing hearing and imposed a sentence
9 of eighty-four months imprisonment, consistent with what the
10 parties had agreed to in the plea agreement.

11 In June 2008, Defendant, represented by counsel, filed a
12 motion for retroactive application of the Sentencing Commission's
13 2007 amendment to U.S.S.G. § 2D1.1 (Amendment 706) which lowered
14 the offense levels applicable to cocaine base offenses.¹ The
15 Court denied Defendant's motion, relying in part on the fact that
16 Defendant was sentenced pursuant to the career offender guideline,
17 not U.S.S.G. § 2D1.1. Defendant appealed the Court's denial of
18 his motion for sentence reduction and the Ninth Circuit affirmed.
19 United States v. Walker, 475 Fed. App'x 198 (9th Cir. 2012).

20 DISCUSSION

21 "As a general matter, courts may not alter a term of
22 imprisonment once it has been imposed." United States v. Hicks,
23 472 F.3d 1167, 1169 (9th Cir. 2007). However, 18 U.S.C. section
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26 ¹ Defendant, proceeding pro se, also moved, under 28 U.S.C.
27 § 2255, to vacate or correct his sentence, claiming that his plea
28 agreement was involuntary or the result of ineffective assistance
of counsel.

1 3582(c)(2) creates an exception to this rule.² A defendant is
2 eligible for a sentence reduction under Section 3582(c) "if two
3 prongs are satisfied: (1) the sentence is based on a sentencing
4 range that has subsequently been lowered by the Sentencing
5 Commission and (2) such a reduction is consistent with applicable
6 policy statements issued by the Sentencing Commission." United
7 States v. Pleasant, 704 F.3d 808, 810 (9th Cir. 2013) (internal
8 quotation marks omitted). The policy statement at U.S.S.G.
9 § 1B1.10(a)(1) provides that a defendant is eligible for a
10 sentence reduction if "the guideline range applicable to that
11 defendant has subsequently been lowered as a result of an
12 amendment to the Guidelines. . . ." U.S.S.G. § 1B1.10(a)(1).
13 Accordingly, a defendant's sentence must be "based on" a
14 sentencing range that has been changed, and the guideline range
15 "applicable to" the defendant must have been lowered by an
16 amendment in order for him or her to be eligible for a reduction
17 under Section 3582(c).

18 The question of whether a sentence is "based on" a sentencing
19 range is different from whether a guideline range is "applicable
20 to" a defendant. Pleasant, 704 F.3d at 810 (citing United States
21 v. Wesson, 583 F.3d 728, 730 (9th Cir. 2009)). Application Note
22

23 ² Section 3582(c)(2) provides:

24 In the case of a defendant who has been sentenced to a
25 term of imprisonment based on a sentencing range that
26 has been subsequently lowered by the Commission . . .
27 the court may reduce the term of imprisonment after
28 considering the factors set forth in section 3553(a) to
the extent applicable if such reduction is consistent
with the applicable policy statement of the Sentencing
Commission.

1 1(A) to U.S.S.G. § 1B1.10 provides that the applicable guideline
2 range is "the guideline range that corresponds to the offense
3 level and criminal history category determined pursuant to §
4 1B1.1(a), which is determined before consideration of any
5 departure provision in the Guidelines Manual or any variance."
6 U.S.S.G. § 1B1.10 cmt. n.1(A).

7 Defendant's Sentencing Guidelines range was calculated
8 pursuant to the Career Offender Guideline at U.S.S.G. § 4B1.1.
9 Plea Agreement ¶ 7. Accordingly, the guideline range "applicable
10 to" Defendant is the Career Offender Guideline, even though the
11 Court sentenced him below that Guidelines range. Pleasant, 704
12 F.3d at 812. Because Amendment 750 does not reduce the applicable
13 Guidelines range, Defendant is not eligible for a sentence
14 reduction pursuant to § 3582(c).

15 CONCLUSION

16 For the foregoing reasons, Defendant's motion for reduction
17 of sentence is DENIED (Docket No. 57).

18 IT IS SO ORDERED.

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20 Dated: 4/10/2013

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23 CLAUDIA WILKEN
24 United States District Judge
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